

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN STOCKDALE and U.S. POSTAL SERVICE,
AIR MAIL CENTER, Atlanta, GA

*Docket No. 00-714; Submitted on the Record;
Issued January 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has established that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124.

Considering the second issue first, the Board finds that the Office improperly denied appellant's request for a hearing.

Appellant filed a claim for a neck and shoulder injury occurring on March 26, 1999.¹ By decision dated September 16, 1999, the Office denied appellant's claim on the grounds that he did not establish fact of injury on March 26, 1999.

In a letter postmarked October 16, 1999, appellant requested a review of the written record by an Office hearing representative. By decision dated November 8, 1999, the Office denied appellant's request for hearing as untimely.

Section 8124(b) of the Federal Employees' Compensation Act², concerning a claimant's entitlement to a hearing, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary." As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.³

¹ Appellant originally filed a claim for a recurrence of disability on March 26, 1999 causally related to an April 30, 1997 employment injury. The Office determined that the claim was for a traumatic injury as appellant had alleged an injury occurring in a single workday.

² 5 U.S.C. § 8101 *et seq.*; § 8124 (b)(1).

³ *Frederick D. Richardson*, 45 ECAB 454 (1994).

In this case, appellant's request for a review of the written record was timely. The Office, in its November 8, 1999 decision denying appellant's request for a review of the written record as untimely, found that the prior decision was dated September 13, 1999 while appellant's request was postmarked October 16, 1999 and thus more than 30 days from the date of the prior decision. However, the date of the prior decision was September 16, 1999 rather than September 13, 1999. The 30-day period for determining the timeliness of appellant's request for a review of the written record commenced on the first day following the issuance of the Office's September 16, 1999 decision. The 30th day, October 16, 1999, fell on a Saturday, giving appellant until Monday, October 18, 1999, the first regular business day following October 16, 1999, within which to request a hearing or review of the written record on his claim.⁴

Appellant requested a review of the written record by letter postmarked October 16, 1999.⁵ Appellant's request for a review of the written record is, therefore, timely. Consequently, as appellant was entitled to a hearing as a matter of right, the Office erred in denying appellant's request for a review of the written record. The case will be remanded to the Office to provide appellant a review of the written record under section 8124(b) to be followed by an appropriate decision regarding whether appellant has established that he sustained an injury in the performance of duty on March 26, 1999.⁶

The decision of the Office of Workers' Compensation Programs dated November 8, 1999 is set aside, and the case is remanded for further proceedings in accordance with this decision of the Board.

Dated, Washington, DC
January 8, 2001

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁴ See *Gary J. Martinez*, 41 ECAB 427 (1990).

⁵ According to the relevant regulations, the determination of whether a hearing request is timely is governed by that date that it is postmarked. See 20 C.F.R. § 10.616(a).

⁶ Given the Board's disposition of the issue of the timeliness of appellant's request for a hearing, it is premature to consider the issue of whether appellant has established an employment-related injury on March 27, 1999.